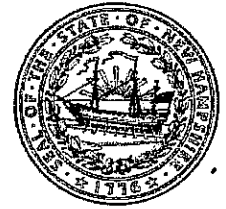




The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

Rep. D.L. Chris Christensen, Chairman

Oil Fund Disbursement Board

March 9, 2009

The Honorable Susan W. Almy, Chairman
House Ways and Means Committee
Room 202
Legislative Office Building
Concord, New Hampshire 03301

SUBJECT: HB 672-FN-A, Relative to the Oil Discharge & Disposal Cleanup Fund

Dear Chairman Almy:

Thank you for the opportunity to testify on HB 672-FN-A. The Oil Fund Disbursement Board (Board) and Department of Environmental Services (Department) *strongly oppose* this bill because it will adversely impact environmental quality, place public health at risk and impede economic development in New Hampshire. Arguments against passage of this bill are summarized below and further detail is presented thereafter.

- HB 672-FN-A substantially reduces and then eliminates important and needed environmental cleanup funding that is passed-through to eligible parties including State agencies, counties and municipalities. HB 672-FN-A effectively negates recent legislation to extend cleanup funding. See Laws of 2008, Chapter 249 (HB 1426-FN-A).
- Without adequate funding, contamination in groundwater and drinking water supplies will persist and the risk of further contamination will increase. Economic development will be impeded because on-site contamination and the risk of contamination migration are known barriers to the redevelopment or sale of real estate.
- Under federal regulations, owners of underground storage tank facilities must demonstrate they have \$1,000,000 per occurrence insurance coverage for cleanup and third-party damages. The Oil Discharge and Disposal Cleanup Fund (ODDCF), provides cleanup coverage and protection from lawsuits for hundreds of motor fuel retailers, businesses, counties, municipalities and non-profits. These owners may be forced to close their facilities due to a lack of affordable insurance.
- The ODDCF provides funding for Department cleanup project management and leverages federal grants. Loss of State funding and federal grants as a consequence, will severely limit the Department's ability to manage the cleanup of contaminated sites and protect groundwater as required by statute. There are no federal funds available for storage tank owners that could take the place of the ODDCF.
- Those opposed to continuing the ODDCF assert that it is a subsidy program for major oil companies or other entities that can afford the cost of cleanup. Data maintained by the Department and summarized in the attached document, shows the majority of cleanup funding benefits New Hampshire small businesses and private property owners. In addition, State agencies, including the Department of Transportation, counties and municipalities are able to access the ODDCF in a variety of circumstances. HB 355-FN-A would increase cleanup funding to the benefit of the majority supported by the fund, and includes new rulemaking authority for the Board to establish co-pays in addition to

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statutory "deductibles". Therefore, as the fund program moves forward to complete existing cleanup projects where deductibles have already been satisfied, and with finite revenues available, the Board will be able to consider other factors when assessing the continuing needs of those eligible parties.

HB 672-FN-A would re-allocate revenues from an existing \$0.0125 per gallon import fee on gasoline and \$0.015 per gallon import fee on diesel fuel, that currently provide income for a dedicated environmental cleanup fund. In FY 2010, an estimated \$4,500,000 in revenues (38%) normally allocated to the ODDCF would instead be allocated to the Highway and Bridge Betterment account, increasing to an estimated \$8,100,000 (70%) in FY 2011 and FY 2012. The bill also repeals the ODDCF and another dedicated fund, the Gasoline Remediation and Elimination of Ethers (GREE) Fund on July 1, 2012 vs. July 1, 2015.

The ODDCF was established under RSA 146-D in 1988 and the GREE Fund under RSA 146-G in 2001, and serve a critical role in the cleanup of gasoline, diesel fuel and "MtBE" contamination, and restitution for third-party damages, in nearly every community in New Hampshire. Despite a legislative ban from the state gasoline supply effective January 1, 2007, recent U.S. Geological Survey studies have found that MtBE is present in groundwater statewide and contamination will be very slow to degrade in the future, perhaps on the order of decades. Many contamination cleanup projects supported by the ODDCF and GREE Fund involve innocent adjacent landowners and impacts to groundwater and public and private water supply wells.

At present, over 800 existing cleanup projects are supported by the ODDCF and GREE Fund, and 90% of those will not be completed by July 1, 2012. Of the 800, nearly 100 are State, county and local government projects averaging \$620,000 in total annual cleanup costs. In addition, the ODDCF and GREE Fund are available to support new cleanup projects that may occur at the 1,842 motor fuel storage facilities operating throughout the state. The State, counties and local governments own 260 of these facilities, and 758 are single-owner facilities. Completion of cleanup projects is directly dependent on funding availability and the time required to restore groundwater quality. HB 672-FN-A does not address how projects will be completed and groundwater protection accomplished in the wake of significantly reduced funding and early repeal. Because annual income at the current \$0.015 per gallon import fee is not adequate, cleanup actions are being delayed at 48 sites across the state. In addition, as of January 31, 2009, there are 383 cleanup payment requests "in-house" totaling \$2,249,000 awaiting approval on a first-in, first-out basis. Hence, the Board and Department support HB 355-FN-A that would provide additional cleanup funding.

Businesses, private property owners, State agencies, counties and local governments will not have time to identify and develop alternate cleanup funding, as ODDCF funding rapidly decreases and is then eliminated along with the GREE Fund. Without cleanup funds, responsible parties will become recalcitrant in performing required work, necessitating Department enforcement or intervention using State contractors in situations where there is a risk to public health. The available resources for Department intervention are limited, and cost recovery is slow, difficult, and can require Department of Justice action. Further consequences will include lost tax revenues at the State and local level, as many properties will remain blighted and not developed or sold. In addition, the existence of the GREE Fund demonstrates a commitment by the State to remedy the statewide problem of MtBE contamination in groundwater. Legislation approving the early lapse of the GREE Fund in 2012 would seriously undermine the State's efforts to address this continuing problem.

In addition to providing cleanup funding, the ODDCF is a USEPA-approved financial responsibility mechanism for underground storage tank (UST) facility owners and operates as excess insurance. Like the funds established in the majority of the states, the ODDCF was established because private insurance coverage for existing contamination cleanup is generally not available, due to "absolute pollution exclusion" language in standard commercial property insurance policies. Thus, the ODDCF provides important environmental liability protection for UST facility owners, because maintaining financial responsibility for cleanups and third-party damages is a federal and New Hampshire regulatory requirement. Without the fund, only those owners that have sufficient assets to meet a financial test of self-insurance, or can afford the cost of pollution insurance policies with high deductibles, will be in compliance with the regulations. Many of these facilities will be forced to close due to non-compliance, including those owned by counties and local governments. Closure of UST facilities could result in disruptions of fuel availability in regions of the state that are already economically stressed.

Notwithstanding a decrease in cleanup funding and early lapse of the funds, under State statute, the Department will remain responsible for ensuring cleanup is completed and for regulating facilities to prevent new contamination. This activity requires a minimum workforce and related administrative resources. As a USEPA-approved financial responsibility program, the ODDCF leverages approximately \$1,100,000 per year in federal grants for UST compliance and cleanup program management. Under the federal Energy Policy Act of 2005, Subtitle B Underground Storage Tank Compliance, USEPA may withhold grants from states that divert financial responsibility funds for other purposes, and/or withdraw financial responsibility program approval if a state fund becomes insolvent. The current support for Department activities provided by the ODDCF, GREE Fund and federal grants cannot reasonably be shifted to other State dedicated funds. Failure to adequately fund the program would necessitate a significant program and workforce reduction. This would render the Department unable to effectively manage the cleanup of sites and protect New Hampshire's groundwater.

In summary, we wish to restate our firm opposition to this bill. We hope the House Ways and Means Committee will agree with the Board and Department, and determine that passage of HB 672-FN-A runs counter to the best interests of the state and its citizens. Detailed ODDCF and GREE Fund program operating reports are available that support the information provided in this letter. If you have questions, please contact Michael Wimsatt, Director of the Waste Management Division at (603) 271-2905, Michael.Wimsatt@des.nh.gov, or Timothy R. Denison at (603) 271-2570, Timothy.Denison@des.nh.gov.

Sincerely,



Rep. D.L. Chris Christensen, Chairman
Oil Fund Disbursement Board



for Thomas S. Burack, Commissioner
Department of Environmental Services

Attachment

cc: Members of the Ways and Means Committee
Rep. Candace Bouchard
Rep. Gene Chandler
Sen. Robert Letourneau
Oil Fund Disbursement Board

Oil Discharge & Disposal Cleanup Fund (RSA 146-D) and Gasoline Ether Fund (RSA 146-G)

FY 1991 - FY 2008 Reimbursable Costs Summary



Owner/Eligible Party Category	Total Reimbursable Costs for all Projects, in all Communities	Percent of Total
Various Businesses & Private Property Owners	\$75,186,797	49%
Regional Oil Companies	\$39,941,930	26%
National/International Oil Companies	\$25,552,555	17%
Local Governments & Public Schools	\$9,869,152	6%
State Agencies	\$2,841,153	2%
Counties	\$912,938	0.6%
Churches, Non-Profits & Private Schools	\$378,320	0.2%
Total:	\$154,682,845	100%

Notes:

1. Under RSA 146-D, reimbursement for contamination cleanup and third-party damage costs is available to owners of above ground storage tanks (ASTs) and underground storage tanks (USTs) primarily storing gasoline and diesel fuel. Under RSA 146-G reimbursement for contamination cleanup and water supply monitoring costs is available to owners of public and private water supplies, and properties contaminated by MtBE. Reimbursement payments from RSA 146-D began in FY 1991, and began in FY 2002 from RSA 146-G.

2. Total reimbursable costs are those authorized for payment by NHDES, on behalf of the Oil Fund Disbursement Board, to repay contamination cleanup and water supply monitoring costs incurred by eligible parties. Under RSA 146-D, payment is reduced by a statutory "deductible" ranging from \$5,000 - \$30,000 for each eligible cleanup project. Total net reimbursement payments from the two funds combined for FY 1991 - FY 2008 was \$140,771,629.

3. Business and private property owners include: retailers/convenience stores selling branded motor fuels, former fuel retailers, vehicle dealers/repair shops, business that store and use fuels for vehicle fleets and in manufacturing, and properties impacted by MtBE contamination. 66% of operating AST facilities and 44% of operating UST facilities are owned by various businesses.

4. Regional oil companies include very small to large companies that are fuel wholesalers and/or retailers of branded fuels at several to numerous locations. These companies may operate in NH, New England and the Northeast. Cumberland Farms, Inc. (CFI) identifies its operations as northeast regional and is included in this category. However, the company has a large wholesale/retail fuel operation and is affiliated with Gulf Oil Corp. Including CFI with the National/International category would increase that category, and decrease the Regional category, by 4%. 15% of operating AST facilities, and including CFI, 26% of operating UST facilities are owned by regional oil companies.

5. National/International oil companies are those with operations in most areas of the country, e.g., ExxonMobil Corp., or are not headquartered in the U.S., i.e., Irving Oil Company. 2% of operating AST facilities and 15% of operating UST facilities are owned by national/international oil companies.

6. State, county, local government and church/non-profit locations include highway garages, solid waste facilities and similar locations, public and private schools, county home facilities and others. 17% of operating AST facilities and 16% of operating UST facilities are owned by these categories. The largest reimbursement recipient for State agencies is DOT, and DOT owns more UST facilities (90) than any other single owner among all the categories. DOT receives reimbursement for its facilities and for cleanup costs incurred during construction near facilities owned by other eligible parties.